

Decision **PROPOSED DECISION OF ALJ McKENZIE** (Mailed 8/10/ 2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Sierra Pacific Power Company for General Rate Relief and for Authority to Increase its Electric Rates and Charges for Electric Service.

Application 05-06-018
(Filed June 3, 2005)

(See Appendix A for list of Appearances.)

OPINION APPROVING SETTLEMENT

Summary

Today, we approve a comprehensive settlement agreement (Settlement Agreement) entered into by Sierra Pacific Power Company (Sierra), the Division of Ratepayer Advocates¹ (DRA), The Utility Reform Network (TURN), the A-3 Customer Coalition (A-3CC), and the Western Manufactured Housing Community Association (WMA), the active parties to this General Rate Case (GRC) proceeding. The Settlement Agreement² establishes a revenue requirement, allocates the revenue requirement responsibility among customer classes, designs a rate structure, and resolves all issues in Sierra's application for general rate relief and for authority to increase its electric rates and charges for electric service.

¹ DRA was formerly the Office of Ratepayer Advocates.

² The Settlement Agreement and the accompanying motion and tables are Attachment A to today's decision.

The Settlement Agreement increases base rates³ by \$3,916,000,⁴ or approximately 6.94% of total revenues. The rate increase is effective today. Sierra was last authorized to increase base rates in January 2004. Today's adopted revenue increase represents approximately 50.1% of Sierra's total requested increase, and results from increasing costs for both labor and non-labor expenses and from increased plant investment.

Procedural History

On June 3, 2005, Sierra applied for authority to increase base rates by \$8.1 million in the eastern California counties that it serves.⁵ Sierra requested that rates be effective January 1, 2006. The request represented an overall increase of 12.7% for Sierra's retail customers.

On July 8, 2005, DRA protested the Application. DRA asserted that Sierra did not sufficiently explain or support increases in various plant additions, and depreciation and operating expenses. Sierra replied to DRA's protest on July 21, 2005.

Assigned Administrative Law Judge (ALJ) A. Kirk McKenzie conducted a prehearing conference (PHC) on September 7, 2005. During the PHC, TURN⁶

³ Base rates exclude surcharge revenues such as public purpose programs and Energy Cost Adjustment Clause balancing revenues.

⁴ In addition to the \$3,916,000 increase in base rates, the Settlement Agreement includes an increase of \$182,000 related to the Energy Efficiency component of Public Purpose programs, or a total increase of \$4,098,000.

⁵ Sierra serves California customers in Nevada, Placer, Sierra, Plumas, Mono, Alpine, and El Dorado Counties.

⁶ TURN represents residential customers.

and A-3CC⁷ intervened. On October 7, 2005, assigned Commissioner John Bohn and the assigned ALJ issued a Ruling and Scoping Memo, which confirmed the categorization and need for hearing, defined the issues, established a schedule, and directed the parties to meet and confer in a settlement conference, to determine which issues, if any, would have to be adjudicated through hearing.

Settlement Agreement

In mid-January, 2006, the parties began conducting settlement discussions. On January 18, 2006, the parties submitted a Joint Statement of Material Facts to be Adjudicated at Hearing (Joint Statement). On January 19, 2006, the parties reached a verbal agreement settling all revenue requirement issues, and so informed the ALJ during a telephone conference held that day. On January 20, 2006, the parties reached a verbal agreement on marginal cost, revenue allocation and rate design issues, thus effectively settling all issues in the proceeding.

On January 23, 2006, the parties submitted a draft settlement agreement to the ALJ summarizing the resolution of all the issues in the case. On January 24, 2006, a brief hearing was held on the draft settlement agreement, at which the ALJ asked clarifying questions about various provisions.⁸

⁷ A-3CC represents Barton Health Care System, Embassy Suites Lake Tahoe Resort, Heavenly Valley Limited Partnership, Lake Tahoe Unified School District, Marriot Vacation Club and Trimont Land Company d/b/a North Star Lake Tahoe.

⁸ The version of the settlement agreement used by the ALJ in asking his questions was admitted into evidence as Exhibit 18.

On February 3, 2006, pursuant to Rule 51 of the Commission's Rules of Practice and Procedure, Sierra submitted a joint motion on behalf of all parties to accept the Settlement Agreement. In their joint motion, the parties assert that the Settlement Agreement should be approved by the Commission because it is reasonable in light of the whole record, consistent with law, and in the public interest, and thus satisfies the requirements for settlements set forth in Rule 51.1(e).

Testimony; Hearing on Settlement Agreement

Sierra served its prepared direct testimony on revenue requirement,⁹ marginal costs, revenue allocation and rate design on June 3, 2005. DRA served its prepared testimony on results of operations¹⁰ on November 18, 2005. TURN served its prepared testimony on results of operations¹¹ on November 21, 2005. On December 6, 2005, Sierra served rebuttal testimony on ORA and TURN's results of operations testimony. DRA, TURN, A-3CC and WMA served their prepared testimony on marginal costs, revenue allocation and rate design on December 7, 2005. On December 23, 2005, Sierra, A-3CC, and WMA served rebuttal testimony on marginal cost, revenue allocation and rate design issues.

⁹ Sierra is a multi-jurisdictional utility that provides electric service under three jurisdictions- California, Nevada, and the Federal Energy Regulatory Commission. Sierra's revenue requirement is based on its cost of service studies and is then allocated among the three jurisdictions.

¹⁰ DRA's results of operations are based on Sierra's California jurisdictional electric revenues, expenses, and plant.

¹¹ TURN's testimony addresses only certain aspects of Sierra's California jurisdictional results of operations, primarily for the purpose of ensuring consistency between California and Nevada ratemaking components.

As set forth in the Scoping Memo, on January 18, 2006, the parties filed their Joint Statement listing unresolved revenue requirement, marginal cost, and rate design issues.

As noted above, an evidentiary hearing was held on January 24, 2006, to review the proposed Settlement Agreement and to identify and receive testimony and exhibits into the record.

Terms of the Settlement Agreement

The Settlement Agreement resolves all issues related to Sierra's 2006 GRC. Its primary provisions are summarized below:

A. Revenue Requirement

The amounts listed below are reductions from Sierra's requested expenses and plant amounts for 2006 as a result of the Settlement Agreement. Reductions in revenue requirement as a result of these expense and plant reductions are shown in parentheses.

- A reduction to depreciation expense to reflect a Public Service Commission of Nevada depreciation study (\$1,685,000);
- A reduction reflecting potential savings as a result of corporate reorganization (\$164,000);
- A reduction to fuel related materials and supplies (\$123,000);
- A reduction for Operations and Maintenance expenses (\$650,000);
- A reduction in the costs of implementation and education related to electric restructuring (\$330,000); and

Significant adjustments to plant amounts include:

- A reduction to forecasted distribution plant (\$262,000);

- Reduction in allowed costs for the Pinon Pine Power Plant (\$297,000);
- Removal of the unamortized balance of generation divestiture costs (\$84,000);
- A reduction to forecasted transmission plant (\$100,000); and
- A reduction in rate base to reflect customer deposits (\$25,000).

In addition, the Settlement Agreement reflects a reduction in rate of return as a result of a reduced return on equity from Sierra's requested 10.9% to 9.92%. The revenue requirement impact of this reduction is \$580,000.

B. Marginal Costs, Revenue Allocation, and Rate Design

Significant principles adopted in the Settlement Agreement for unbundling costs, determining marginal costs, and designing rates include:

- All demand side management costs are unbundled to the distribution function;
- Franchise taxes are allocated on a property-related allocation factor;
- Certain charges are allocated to the distribution function; the balance of other operating revenues are allocated on a sales revenue basis;
- Sierra's marginal cost study is used for purposes of designing rates, however, Sierra will re-evaluate the method of determining class marginal transmission and demand costs in its next GRC;
- Revenue is allocated based on the Equal Percentage of Marginal Cost methodology with a "cap"¹² of 3.2%;

¹² The cap defines the maximum increase to any class above the overall percentage increase.

- The residential customer charge is increased from \$4.50 per month to \$6.00 per month, and the differential between residential tiers is set at 17.5%;
- The master meter credit is calculated and implemented in a manner similar to the calculation proposed by Sierra. A submetering credit includes an adjustment for common area usage of 5%; and
- Sierra will offer an internet-based bill calculation tool for master metered customers, but will not include costs of this service in the DS-1 rate schedule.

Settlement Criteria

Where parties to a proceeding settle all disputed issues, the Commission applies criteria set forth in Rule 51.1(e) of the Commission's Rules to evaluate the proposed settlement. This rule requires that the settlement be "reasonable in light of the whole record, consistent with law, and in the public interest."

Before we analyze these criteria, we note that the circumstances of the settlement, particularly its endorsement by all parties, generally support its adoption. DRA, whose charge is to represent ratepayer interests, initially protested the application. In addition, parties representing large electric users, retail customers and manufactured housing community owners participated in the proceeding and in the settlement negotiations. Parties prepared and served exhibits on revenue requirement, marginal costs, revenue allocation, and rate design issues. Thus, the Settlement Agreement was reached after careful analysis of the application and through participation of many parties representing a broad array of affected interests.

The record also shows that the Settlement Agreement was reached after significant give-and-take between the parties which occurred over a significant amount of time. This give-and-take is demonstrated by the positions initially taken by parties in prepared testimony, the issues and estimated values listed in

the Joint Statement, and the final positions agreed upon in the Settlement Agreement.

The Settlement Agreement is also consistent with Commission decisions on settlements, which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.¹³ This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.¹⁴

As long as a settlement taken as a whole is reasonable in light of the record, consistent with law, and in the public interest, it may be adopted. We next analyze these criteria with specific reference to the Settlement Agreement.

1) The Settlement is Reasonable in Light of the Record

The prepared testimony, the Joint Statement, and the Parties' Joint Motion contain the information necessary for us to find the Settlement Agreement reasonable in light of the record. Prior to the settlement, parties conducted extensive discovery, and served detailed testimony on the issues related to revenue requirement, marginal costs, revenue allocation and rate design.

The Settlement Agreement represents a reasonable compromise of the parties' positions. The prepared testimony of the parties and the Joint Statement, comprising the record for this proceeding, contain sufficient information for us to judge the reasonableness of the Settlement Agreement.

¹³ See e.g., Decision (D.) 88-12-083 (30 CPUC 2d, 189, 221-223), D.91-05-029 (40 CPUC 2d, 301, 326), and D.05-03-022, *mimeo.*, p. 8.

¹⁴ See, D.92-12-019, 46 CPUC 2d 538, 553.

2) The Settlement Agreement is Consistent with Law

The parties believe that the terms of the Settlement Agreement comply with all applicable statutes. These include, *e.g.*, Pub. Util. Code¹⁵ § 451, which requires that utility rates must be just and reasonable, and § 454, which prevents an increase in public utility rates unless the Commission finds such an increase justified.

We agree. The required showings under §§ 451 and 454 have been made. Further, nothing in the Settlement Agreement contravenes statute or prior Commission decisions.

3) The Settlement Agreement is in the Public Interest

The Settlement Agreement is in the public interest and in the interest of Sierra's customers. The agreed-upon revenue requirement is significantly below Sierra's request. The revenue allocation and rate design proposed in the Settlement Agreement moderate potentially harsh bill impacts but also move revenue responsibility closer to the cost of service. Our approval of the Settlement Agreement avoids the cost of further litigation, and reduces the use of valuable resources of the Commission and the parties.

Finally, we note that the settling parties comprise all of the active parties in Sierra's GRC, and we do not know of any parties who contest the Settlement Agreement. Thus, the Settlement Agreement commands the unanimous sponsorship of all active parties in this proceeding, who fairly represent the interests affected by the Settlement Agreement. We find that the evidentiary record contains sufficient information for us to judge the

¹⁵ All references are to the Public Utilities Code unless otherwise noted.

reasonableness of the Settlement Agreement and for us to discharge any future regulatory obligations with respect to this matter. Thus, the proposed settlement is consistent with the criteria for all-party settlements set forth in D.92-12-019 (46 CPUC 2d 538).

For all these reasons, we approve the Settlement Agreement as proposed.

Assignment of Proceeding

John A. Bohn is the Assigned Commissioner and A. Kirk McKenzie is the assigned ALJ in this proceeding.

Comments on Proposed Decision

The proposed decision (PD) of the ALJ in this matter was mailed to the parties in accordance with Section 311(d). Rule 77.7(g) of the Commission's Rules provides that the 30-day comment period may be reduced upon the stipulation of all parties to the proceeding. All parties stipulated to a 10-day comment period with no reply comments.

Comments on the PD were received from Sierra and WMA. Most of Sierra's comments recommended minor changes, which we have simply incorporated into the text. However, one of Sierra's concerns should be discussed. In its comments, Sierra requested that references in the PD related to the consistency of the settlement with Assembly Bill (AB) 1 X should be deleted. We have deleted these references, because the provisions in Water Code § 80110 that restrict rate increases for usage up to 130% of baseline do not apply to Sierra, as Sierra's customers do not pay for any of the power purchased by the California Department of Water Resources pursuant to AB 1 X.

Findings of Fact

1. On February 3, 2006, Sierra filed a motion requesting the Commission to adopt a settlement agreement entitled "Settlement Agreement Between Sierra Pacific Power Company, Division of Ratepayer Advocates, The Utility Reform Network, The A-3 Customer Coalition, and the Western Manufactured Housing Communities Association."

2. All parties have agreed to settle this proceeding.

3. All issues in this proceeding are encompassed by, and resolved in, the Settlement Agreement.

4. The parties to the Settlement Agreement are all of the active parties in this proceeding.

5. The parties are fairly reflective of the affected interests.

6. No term of the Settlement Agreement contravenes statutory provisions or prior Commission decisions.

7. The Settlement Agreement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

8. The Settlement Agreement is reasonable in light of the record, is consistent with law, and is in the public interest.

9. The revenue requirement as set forth in Exhibit A of the Settlement Agreement is reasonable.

10. The revenue allocation set forth in Table A of the Settlement Agreement is reasonable.

Conclusions of Law

1. The Settlement Agreement fully resolves and settles all disputed issues among the parties concerning Sierra's application in this proceeding.

2. The Settlement Agreement we approve is reasonable in light of the whole record, consistent with law, and in the public interest.
3. The Settlement Agreement should be approved.
4. This decision should be effective today so that the Settlement Agreement may be implemented expeditiously.
5. A.05-06-018 should be closed.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement set forth in Attachment A is approved.
2. Within eight days of today's date, Sierra Pacific Power Company shall file an advice letter with tariff changes and new rates to implement this decision. The tariff changes and new rates shall become effective on or after the date filed, subject to Energy Division's determination that they are in compliance with this decision.
3. Application 05-06-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A
(List of Appearances)

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(END OF APPENDIX A)